

AN ORDINANCE

07-O-0682

BY: COUNCILMEMBER CLAIR MULLER

AS SUBSTITUTED BY:

COMMUNITY DEVELOPMENT /HUMAN RESOURCES COMMITTEE

AN ORDINANCE TO CREATE A NEW SECTION 15.07-006 OF THE PART OF THE CITY OF ATLANTA LAND DEVELOPMENT CODE TO ADDRESS LOTS OF RECORD; TO DELETE SUB-PARAGRAPH J OF CODE SECTION 15.07-005; AND FOR OTHER PURPOSES

WHEREAS, Part 15 of the Land Development Code, Land Subdivision Ordinance, governs the subdivision of one and two family lots in the City of Atlanta; and

WHEREAS, part of the Subdivision Ordinance address lots of record; and

WHEREAS, currently lots of record are recognized when a land owner can show that the property has always been transferred as two separate and distinct parcels; and

WHEREAS, the ordinance also provides that if structures have been built across lot lines they may be removed to cure the defect and would not be held against the property owner; and

WHEREAS, in many cases structures have been built across property lines for several years; and

WHEREAS, building across property lines should be treated as a de facto intent to abandon original lot of record status.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA, HEREBY ORDAINS AS FOLLOWS:

Section 1: That part 15 land subdivision ordinance be amended by adding a new section 15-07.006 to read as follows:

Section 15-07.006. Acknowledgement of Lots of Record Existing Prior to the Sub-Division Ordinance

(a) *Eligible Lots.* The director shall acknowledge lots with a legal description filed with Clerk of the Superior Court of Fulton County or DeKalb County prior to November 19, 1958, the effective date of the City of Atlanta Subdivision Ordinance, and which do not appear on the official cadastral map on which the bureau of planning has recorded the boundaries of lots recognized by the City of Atlanta provided that all of the following criteria can be satisfied:

1. No portion of the property in any of the lots to be acknowledged shall have been included in any plat recorded with any other boundaries or dimensions in a manner that shows the intent to abandon the original property lines. Even if the lots on the subject property are currently in their original configuration, any past combination of any portion of the subject properties with another property in a manner that does not evidence intent to maintain the lots in their original configuration shall be considered an abandonment of the original property lines.
2. Where a single deed includes multiple lots, only a separate metes and bounds description of each individual lot shall be a sufficient description of the original property lines. A legal description in a single deed which identifies multiple lots by reference to lot numbers on a subdivision plat shall not be considered to be a sufficient identification of individual boundaries to justify creation of lots of record unless the metes and bound descriptions of each of the individual lots are also set forth in that deed. A single deed referring to multiple lots on a subdivision plat created under the City's subdivision ordinance and approved and on file with the bureau of planning shall not be required to have a metes and bounds description in the deed so long as the subdivision plat contains a metes and bounds description of the lots and no principal structure, including decks, and porches and other attachments that would ordinarily be included in the building footprint, was constructed over any of the property lines of any lot to be acknowledged.
3. No primary structure, including decks, and porches and other attachments that would ordinarily be included in the building footprint, shall have been constructed over any of the property lines of the lot to be acknowledged, regardless of whether such primary structure or the attachment thereto, has been or will be demolished. Any document or site plan submitted to the city at any time which shows that a building permit for the primary structure or an addition thereto was requested and granted shall be considered proof that such structure was constructed in that configuration even if the structure no longer exists.
4. The person requesting the acknowledgment of the lot can produce a full and unbroken abstract of title for the exact legal description to be acknowledged which meets the current Title Standards of the State Bar of Georgia and which is attested to by an attorney licensed by the State of Georgia. The abstract of title must show to the satisfaction of the director that the lots to be acknowledged meet the requirements of this section.
5. The acknowledgment of the lot does not conflict with other section of the City Code with respect to the creation of new lots of record.
6. The application procedure is successfully completed.

(b) *Legal effect.* Lots approved as lots of record under this section shall be considered legally non-conforming lots of record and shall be recorded on the official cadastral map of the City of Atlanta.

(c) *Setback requirements.* Acknowledgement of lots of record under the process provided in this section shall not excuse an applicant for a building permit from any setback requirements for the zoning district where the lot is located.

(d) *Other procedures available.* Applications that do not meet the criteria for acknowledgement of lots of record may still be eligible for subdivision of the property so long as the proposed subdivision meets all other requirements of the City Code.

(e) *Procedure for application.* Applicants requesting acknowledgement of historically platted lots of record shall comply with the following procedure:

1. File a request for acknowledgement on the application form made available by the director. An application shall be accepted when offered to the bureau of planning and the director may designate one or more persons to accept applications. The address on the application is the location where the applicant agrees that all notices and other written communication shall be received.

2. Each owner of record must show their consent to the procedure as evidenced by the submission of a notarized consent form in substantially the form and containing the same information as that form made available by the director. Consent forms from all owners of record must be submitted as a part of the application package before an application will be accepted.

3. Submit a certified copy of the recorded plat currently on file in Fulton and/or DeKalb County. The plat must clearly outline the boundary dimensions of the subject lot and must be legible.

4. Submit a full and unbroken abstract of title for the exact legal description to be acknowledged which meets the current Title Standards of the State Bar of Georgia and which is attested to by an attorney licensed by the State of Georgia.

- (i) The abstract of title must document that each lot to be recreated is eligible under the criteria set forth in this section.

- (ii) The abstract of title must document the transfer of the original lots since the recording of the original plat and document that no transaction has involved the abandonment of property lines through the combination or recombination of any portion of the original lots on the subject property with each other or with other adjacent properties.

5. Submit three copies of a recordable plat or survey showing existing and proposed property boundaries and all other applicable information specified in section 15-07.004.

- (i) The plat or survey must be clear and legible and shall not exceed 17"x 22".
- (ii) The plat or survey must show the proposed property boundaries as a solid line.
- (iii) The plat or survey must include original signatures across the surveyor's seal on the mylar and/or on the copies.

(f) *Procedure for processing of application.* A request for acknowledgement application which meets the above criteria shall be acted on by staff authorized by the director to decide on the application provided that:

1. Within five (5) business days after the close of the semimonthly filing deadline when an acknowledgement application is received, the director, bureau of planning, has distributed a copy of each application to be considered, with accompanying plats and other drawings, to the following:

- (i) District councilmember
- (ii) Urban Design Commission
- (iii) Chair of the Neighborhood Planning Unit (NPU)

2. The applicant has posted a sign that the property is the subject of an application for acknowledgement of lots of record no later than fifteen (15) days prior to the date of the NPU meeting where the application is to be considered and presents a posting affidavit to be included with the application no later than the date of the meeting of the bureau of planning lot of record staff review where the application is to be considered.

3. The NPU has had opportunity for review and consideration of the acknowledgement application in accord with the following:

- (i) The NPU has considered the application at a meeting held within six weeks after the semimonthly deadline closing date.
- (ii) Failure of the NPU to consider the acknowledgement application within the required period after receipt of notice from the director shall be considered waiver of the opportunity for review.
- (iii) If the applicant requests deferral of NPU consideration and so informs the director, the NPU consideration at the agreed upon meeting date shall be considered timely and the director may reschedule consideration of the application. If the NPU defers on the consideration of

the application, this shall be considered waiver of the opportunity for review.

(iv) The NPU shall be responsible for making its recommendations available to the director for consideration by the staff.

4. Failure of the director to accomplish the tasks required for the required notifications shall not entitle an applicant to approval of the application but the applicant shall have the right to have their application reviewed by the bureau of planning within 180 days of the date that a complete application is received.

(g) *Citizen input.* During the lot of record staff review meeting provided in this section, citizens may present information to the director refuting the validity of the deeds or other documentation submitted by the applicant showing the transfer of the original lots since the recording of the original deeds. This information should be presented to the director in writing, at least five (5) business days prior to the date of the subdivision review committee meeting associated with the closing date for the application, which shall be the first date on which the request will be eligible for a final decision by the staff. Information not timely received may not be considered.

(h) *Applicant to be present at lot of record staff review meeting.* The applicant or his or her designee is required to be present at the time that the staff reviews the application and to provide any additional data that is required by this chapter. Within ten (10) business days after each such meeting, each applicant shall be notified by the director in writing of a list of problems or deficiencies, if any, in the application identified by the staff.

(i) *Amendments to the Application.* The applicant shall have no more than thirty (30) days from receipt of comments outlined in subsection (h) above to submit amendments to the application to address the problems or deficiencies identified in the lot of record staff review meeting. Amendments to the application to address the problems or deficiencies identified by the staff shall not require a second hearing before the NPU but such amendments may be reviewed by any interested party who may submit comments in writing to be included in the record. The director may but is not required to respond to the amendments with further comments.

(j) *Action by director.* The director shall review and make a part of the record any written comments that were received from the neighborhood planning unit and individual citizens regarding the subject application and any amendments to the application. The director shall review and take action on the application within sixty (60) days of the date of meeting of the subdivision review committee associated with the closing date for the acknowledgement application or the last date that amendments are received from whichever is later. The applicant may request in writing that the date for final decision by the director be deferred to a date certain but the director shall not be required to agree to extend the date of decision. If an action is not taken by the director

within the time as stated above or as extended, the application shall not be deemed approved or denied but the applicant may request in writing that such decision be issued. If a notice of decision is not made within ten (10) working days of the date of demand for written decision, the applicant may deem the application denied.

(j) *Notice of decision.* The director shall provide a written decision to the applicant, to the district member of council, the urban design commission, and to the appropriate neighborhood planning unit committee chairperson. Any appeal of the decision of the director shall be made within thirty days of the date of the written decision under the same procedure as appeals of decision of other subdivisions.

(k) *Limitation on application for variances.* Lots of record that are formally acknowledged by the bureau of planning under this section shall not be subject to the one year period of limitation for application for variances.

Section 2: Sub-paragraph (j) of Section 15-07.005 of the land subdivision ordinance is deleted in its entirety.

Section 3: This ordinance shall become effective immediately upon signing by the Mayor or as otherwise provided by the operation of law.